IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 21, 2009 Session

STACEY SLAVEN v. STATE OF TENNESSEE

Appeal from the Circuit Court for Fentress County
No. 9016 Shayne Sexton, Judge

No. M2006-02279-CCA-R3-PC - filed June 9, 2009

The Petitioner, Stacey Slaven, appeals from the Fentress County Criminal Court's order denying her petition for post-conviction relief. She argues that the denial of relief was erroneous because, prior to pleading guilty to second degree murder, she did not receive the effective assistance of counsel and, therefore, her pleas were entered involuntarily. Her argument centers around her contention that trial counsel advised her that she was release eligible at 30% rather than 100% and that, but for this advice, she would not have pleaded guilty. After the appointment of counsel and a full evidentiary hearing, the post-conviction court found that the Petitioner failed to prove her allegations by clear and convincing evidence and denied the petition. Following our review of the record, we affirm the judgment of the post-conviction court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Michael R. Giaimo and Phillips Smalling, Cookeville, Tennessee, for the appellant, Stacey Slaven.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; William P. Phillips, District Attorney General; and John W. Galloway, Huntsville, Tennessee, for the appellee, State of Tennessee.

OPINION

Factual Background

The Petitioner was originally indicted for the first degree murder of her infant child. See Tenn. Code Ann. § 39-13-202. Trial was set for July 14, 2004.

Sometime prior to trial, trial counsel had requested funds for an expert witness to evaluate the Petitioner and review her mental condition, but this request was denied. Trial counsel ultimately utilized funds from the public defender's office and hired an expert. However, the expert was not capable of being prepared by July 14, and trial counsel sought a continuance on July 8. The trial court denied the Petitioner's motion for a continuance.[1] In response, trial counsel candidly stated that he would not be prepared to defend the Petitioner's case on July 14; nonetheless, the proceedings went forward.

On July 14, 2004, the Petitioner entered a "best interest" or Alford[2] plea of guilty to second degree murder. The State agreed that the Petitioner's sentence would not exceed twenty years but that the State remained free to recommend any sentence between fifteen and twenty years.

Regarding the Petitioner's release eligibility, the plea form indicated, in a section titled "Table of Felony Punishments," that the Petitioner was being sentenced for a Class A felony as a Range I, standard offender, which carried a sentencing range of fifteen to twenty-five years and release eligibility following 30% service of the sentence. Thereafter, in section 5 of the document, paragraph c stated as follows:

> I understand that there is no parole/release eligibility for persons convicted of first or second degree murder, especially aggravated or aggravated kidnapping, especially aggravated robbery, rape of a child, aggravated rape, rape, aggravated sexual battery, aggravated arson, and aggravated child abuse. A person convicted of any of these offenses must serve 100% of the sentence except he/she may earn sentence credits which may reduce the sentence, but in no event by more than 15%.

Paragraph d contained the following language, which was crossed out: "However, based on the advice of counsel, the facts of the case, my prior record, and the plea agreement, I do not request consideration as an especially mitigated offender." Finally, paragraph e provided, "I understand that if I plead not guilty but was convicted of the charged offenses after a trial then I would be sentenced" to the following release eligibility, and the box was checked that indicated "as a standard, Range I (30%) offender or, if applicable, an especially mitigated offender." However, all parties agreed that the box which should have been checked specified that the Petitioner would be required "to serve the entire sentence" and then referenced paragraph c above.

At the July 14, 2004 guilty plea hearing, the State provided a factual basis for the Petitioner's plea, introducing a series of exhibits, including the Petitioner's confession to abuse of her child resulting in death. She acknowledged her rights associated with a jury trial and affirmatively waived them.

---

[1] We glean from the transcript of the motion hearing that this cycle of events had recurred for some time.

[2] This type of plea is named after North Carolina v. Alford, 400 U.S. 25 (1970), in which the United States Supreme Court discussed the right of an accused to plead guilty in his or her best interest while professing actual innocence.

At the time she entered her plea, the Petitioner was twenty-three years old and had completed the twelfth grade. She confirmed that she could read and write, that she had read the plea agreement before she signed it, and that she understood the contents of the document. The Petitioner further acknowledged that trial counsel reviewed the document with her and that she was provided a chance to ask him any questions she wished about the papers. When asked if she was under the influence of drugs or alcohol, she answered in the negative. She also replied that she was satisfied with trial counsel's work on her case: "[S]atisfied that he ha[d] investigated the facts and researched the law to the point that he would either be ready for trial or could make the recommendation that's been made." The Petitioner stated that she had no complaints with trial counsel.

A sentencing hearing was held on September 24, 2004. The Petitioner argued that she was an especially mitigated offender and should receive a sentence of thirteen and one-half years. The State, while disagreeing with the proposition of the Petitioner being an especially mitigated offender, confirmed that it was permissible under the terms of the plea agreement to seek a mitigated sentence. During the discussion, the trial court inquired, "Would [an especially mitigated length of punishment] have any bearing on the fact this is a violent offense at a hundred percent?" The State responded that this scenario "theoretically is possible. Of course, it wouldn't adjust the percentage, but you could reduce the minimum sentence . . . ."

In mitigation, the Petitioner presented the expert previously hired by the defense for psychological review before the Petitioner's scheduled trial. The expert testified about the Petitioner's psychological deficiencies in an effort to mitigate her sentence; however, nothing in the expert's testimony would have provided the Petitioner with a viable defense to the crime. In closing arguments, trial counsel requested an especially mitigated sentence of thirteen and one-half years and, thereafter, stated, "She understands she's gonna be serving a hundred percent of this, which technically may reduce down to 85 percent. Even if the [c]ourt put her on this 13 and a half year sentence, she's looking at serving probably an additional ten years, maybe a little more than that." At the conclusion of the hearing, the trial court imposed a sentence of twenty years to be served at 100%.[3]

The Petitioner, with the assistance of counsel, filed a petition for post-conviction relief on September 26, 2005. The Petitioner, pointing to the "face" of the plea agreement, asserted that her plea was not knowing and voluntary due to the incorrect advice of trial counsel that she was release eligible after service of 30% of her sentence. The Petitioner also implied ineffective assistance, noting that, following the trial court's denial of the Petitioner's motion for a continuance, trial counsel was not prepared to defend the Petitioner's case due to his inability to secure expert testimony for trial. A hearing was held on May 5, 2009, at which the Petitioner, her father, and trial counsel testified.

The Petitioner testified that she met with trial counsel twice, both times at the Fentress County Jail. She was unable to provide trial counsel with the names of any witnesses to help in her

[3] A copy of the judgment form is not included in the record on appeal.

defense. She testified that she was on drugs at the time she made the incriminating statements to law enforcement and that her drug usage prior to trial was "very" extensive.

She affirmed that she met with trial counsel before trial to discuss the plea agreement and that her father was present during this meeting. According to the Petitioner, her understanding of the plea agreement was a twenty-year sentence to be served at 30%. She stated that she was not told that she would serve her sentence at 100%. She asserted that she could not remember the day she entered her plea, only recalling "when I got put in jail. That's about it."

The Petitioner was then asked about the plea forms. She recalled going over the second page of the document with trial counsel, and she remembered signing the document. Based upon the information in the plea form, the Petitioner claimed she believed her release eligibility would be after serving 30% of her sentence and, therefore, she would serve only four or five years.

She testified that, to her knowledge, trial counsel never filed any motion to suppress her statements. When asked if trial counsel interviewed any witnesses on her behalf, the Petitioner replied that "[w]e just had a preliminary . . . hearing at the beginning; that's it." She further alleged that she did not comprehend an Alford plea and that it was not explained to her.

The Petitioner remembered the sentencing hearing "[a] little bit." She claimed to be "in shock" when the trial court pronounced her sentence of twenty years at 100%. According to the Petitioner, this was the first time she had heard anything about 100% service. She asserted that she would not have pleaded guilty if she would have known she would have to serve 100% of her sentence. When asked how much time trial counsel took to review the plea agreement with her, she replied, "Not long. . . . Maybe ten minutes." Trial counsel recommended that she accept the plea offer because she "could get a life sentence or more time . . . ."

On cross-examination, the Petitioner stated that she did understand that she was pleading guilty in her best interest to second degree murder. Regarding the length of punishment, the Petitioner comprehended that the plea agreement included a range of fifteen to twenty years. She claimed to be unaware of paragraph c in the plea forms, and she had no knowledge of the statements made by trial counsel at the sentencing hearing about her serving 100% of her sentence.

The Petitioner could not provide any witnesses' names who would testify to her benefit if the case were tried. When asked if she was aware that the State had filed a notice seeking life without the possibility of parole if the Petitioner was convicted of first degree murder, she responded, "I think [trial counsel] said a life sentence." She acknowledged her understanding that a life sentence required a minimum service of fifty-one years.

Next, the Petitioner's father, Bobby Slaven, testified. Mr. Slaven participated in some of the conversations between trial counsel and his daughter. When asked about their discussion regarding service of the sentence, Mr. Slaven replied that trial counsel said 13%; the Petitioner then interjected, "Thirty (30), Daddy." Mr. Slaven then testified that trial counsel, on the morning the Petitioner

entered her plea, said thirteen years at 30%, at the most fifteen years. Trial counsel did not review the plea forms with Mr. Slaven.

Mr. Slaven stated that he also met individually with trial counsel; they discussed possible witnesses for the Petitioner's defense, "but there never was none brought up to bring up." He stated that trial counsel met with him and the Petitioner on "several" occasions, "[e]very time that [the Petitioner] was up here."

According to Mr. Slaven, the Petitioner was involved in drugs throughout these proceedings. When asked about discussions regarding the number of years the Petitioner would have to serve, Mr. Slaven replied that trial counsel did not know how many years "for sure it would be" and that he was also unsure of the percentage to be served. Following the sentencing hearing, his daughter "went berserk" about the twenty-year sentence to be served at 100%; "[S]he thought she wasn't gonna get that kind of sentence." She was upset because trial counsel told her she would probably receive a thirteen-year sentence; moreover, trial counsel said the percentage of service could have been anywhere from 25% to 85%.

On cross-examination, Mr. Slaven confirmed that he talked with trial counsel by telephone for long periods of time, including discussions about the Petitioner's mental and family problems. Mr. Slaven testified that none of the witnesses he mentioned had any information that someone other than the Petitioner had hurt the child. Before and after conversations with trial counsel, the Petitioner would become upset.

Mr. Slaven testified that he was present when trial counsel went over the plea agreement with the Petitioner. He was "pretty sure" trial counsel went over the entire form with the Petitioner, although he may not have read it "through" to the Petitioner. When asked if he recommended to his daughter that she accept the plea offer, Mr. Slaven said that it was either accept the deal or proceed to trial.

The expert the Petitioner saw before she pleaded guilty, who wanted to see the Petitioner more before his testimony at trial, was the same person who later testified at her sentencing hearing. According to Mr. Slaven, the expert had seen the Petitioner again before the sentencing hearing. Mr. Slaven also believed that the case should have been continued so it could "have been investigated a lot more."

Trial counsel then testified. He affirmed that he sought a continuance at the July hearing and that, after being denied this request, he candidly stated he could not be ready for trial. He desired a continuance in order to give the expert more time to evaluate the Petitioner in hopes of developing a viable defense to the crime.

Trial counsel was aware that the Petitioner made at least three statements to law enforcement officials, wherein she confessed to fatally abusing her child. It was obvious to trial counsel that drugs were "a major issue in this household." Trial counsel affirmed that the did not file any motion

to suppress the Petitioner's statements; he did not believe such a motion had any merit. Trial counsel did not recall discussing any procedural matters with the Petitioner because the conversation would quickly deteriorate due to the fact that she was extremely emotional; "[s]he would scream and yell at her father and become basically impossible to talk with." Moreover, the Petitioner did not provide any information with which he could challenge the statements.

Trial counsel recalled several witnesses subpoenaed to testify at trial and believed he conversed with several of them personally. He also examined other witnesses at the preliminary hearing. Other than the psychological evaluation of the petitioner, trial counsel felt ready to proceed to trial.

Trial counsel testified that he did not prepare the plea forms; someone at the district attorney general's office "filled in the blanks." He did make some marks on the document. Trial counsel circled the sentencing range of fifteen to twenty-five years as a Range I, standard offender, requiring service of 30% of the sentence; he made these marking to emphasize the terms of the agreement to the Petitioner. Trial counsel believed the parenthetical (that they were not seeking consideration as an especially mitigated offender) was crossed out when he received the form from the district attorney general's office. Trial counsel confirmed that they were, in fact, seeking an especially mitigated sentence of thirteen and one-half years, but he acknowledged that such a sentence would not affect the percentage of service.

Trial counsel opined that it was "hard for [the Petitioner] to understand any" of the ranges or percentages; trial counsel attributed it to "mental illness." The Petitioner often became upset and irate and then refused to participate in discussions. When asked if he was "comfortable" that the Petitioner understood the terms of the plea agreement, he responded in the affirmative. According to trial counsel, he and the Petitioner's father talked to the Petitioner "in no uncertain terms about what exactly it was that she was signing here." He also said that he informed the Petitioner that his motion to continue the case had been denied and that he would not be able to provide an effective defense at trial.

Regarding paragraph e (where Range I (30%) offender was checked instead of the box requiring service of the entire sentence), trial counsel stated that this section was also checked when he received the form. He confirmed that 30% service was not accurate and that the document was somewhat inconsistent. Trial counsel explained that it was his practice to review the plea forms with a defendant and inform the defendant that he/she was receiving a Range I sentence but then refer back to paragraph c due to the nature of the offense (requiring service of the entire sentence). He stated that, while not reflected on the forms, that was the nature of his discussion with the Petitioner.

On cross-examination by the State, trial counsel testified that the Petitioner was unable to provide him with a version of events which was different from the statements the Petitioner made to police and other facts found by law enforcement in the course of the investigation. At the preliminary hearing, trial counsel had an opportunity to examine one of the officers to which the Petitioner made her statements, and trial counsel was able to explore all possible grounds that might

have served as a basis to suppress the Petitioner's statements. Trial counsel acknowledged that he received "complete discovery" from the State prior to trial, including a number of witnesses' statements.

Regarding the Petitioner's mental health issues, trial counsel affirmed that the Petitioner had been evaluated by Tennessee Mental Health Institute. The evaluation report conveyed that any insanity defense could not be substantiated and that the Petitioner was competent to stand trial. The Petitioner's mental condition was presented in mitigation at the sentencing hearing. The Petitioner's expert was able to testify at the sentencing hearing on the Petitioner's behalf. There was also nothing in the expert's findings that would have substantiated an insanity defense or negated any of the mental elements of the crime.

Trial counsel was also aware that the State had filed a notice to seek life without the possibility of parole based upon the age of the child. After the motion to continue was denied, the State put a deadline on acceptance of the plea offer, a few days before trial was to begin.

Trial counsel reiterated that he went over the plea agreement with the Petitioner "in great detail because of the concern [he] had about" the Petitioner's mental situation. During plea conversations, the Petitioner would become upset and yell at her father, asking him why he could not make the charge disappear. Trial counsel was sure the Petitioner understood the terms of the agreement. When asked about his explanation of percentages to the Petitioner, trial counsel replied that every conversation involved 100% service and that he explained that, with good behavior, this could be reduced to 85%. Despite the inconsistency in the plea forms, trial counsel believed the Petitioner understood she would be serving 100% of her sentence. Trial counsel thought he provided copies of the plea agreement to both the Petitioner and her father.

On redirect, trial counsel said that it was "a fair statement" that the Petitioner could not remember what happened to the child due to her drug use.

After hearing the evidence presented, the post-conviction court entered an order denying the petition on June 20, 2008, nunc pro tunc to May 17, 2006. The post-conviction court ruled that the Petitioner had not satisfied her burden of proving that her plea was entered involuntarily or that trial counsel was ineffective in preparing the case for trial and advising her prior to and during the guilty plea process. The post-conviction court determined that "the [P]etitioner did not present credible testimony that she was unable to understand the procedures followed during the waiver and guilty plea proceeding as set out in the transcript filed as an exhibit to this hearing." This appeal followed.

Analysis

On appeal, the Petitioner argues that the post-conviction court erred in denying her relief because: (1) Trial counsel was ineffective due to his mistaken advice that she was release eligible following service of 30% of her sentence; and (2) Trial counsel was not adequately prepared for trial, failed to seek suppression of the Petitioner's statements, and failed to secure medical testimony to negate the State's evidence. To sustain a petition for post-conviction relief, a petitioner must prove

his or her factual allegations by clear and convincing evidence at an evidentiary hearing. See Tenn. Code Ann. § 40-30-110(f); Momon v. State, 18 S.W.3d 152, 156 (Tenn. 1999). Upon review, this Court will not reweigh or re-evaluate the evidence below; all questions concerning the credibility of witnesses, the weight and value to be given their testimony, and the factual issues raised by the evidence are to be resolved by the post-conviction judge, not the appellate courts. See Momon, 18 S.W.3d at 156; Henley v. State, 960 S.W.2d 572, 578-79 (Tenn. 1997). The post-conviction judge's findings of fact on a petition for post-conviction relief are afforded the weight of a jury verdict and are conclusive on appeal unless the evidence preponderates against those findings. See Momon, 18 S.W.3d at 156; Henley, 960 S.W.2d at 578.

The Sixth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution guarantee a criminal defendant the right to representation by counsel. State v. Burns, 6 S.W.3d 453, 461 (Tenn. 1999); Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975). Both the United States Supreme Court and the Tennessee Supreme Court have recognized that the right to such representation includes the right to "reasonably effective" assistance, that is, within the range of competence demanded of attorneys in criminal cases. Strickland v. Washington, 466 U.S. 668, 687 (1984); Burns, 6 S.W.3d at 461; Baxter, 523 S.W.2d at 936.

A lawyer's assistance to his or her client is ineffective if the lawyer's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 686. This overall standard is comprised of two components: deficient performance by the defendant's lawyer and actual prejudice to the defense caused by the deficient performance. Id. at 687; Burns, 6 S.W.3d at 461. The defendant bears the burden of establishing both of these components by clear and convincing evidence. Tenn. Code Ann. § 40-30-110(f); Burns, 6 S.W.3d at 461. The defendant's failure to prove either deficiency or prejudice is a sufficient basis upon which to deny relief on an ineffective assistance of counsel claim. Burns, 6 S.W.3d at 461; Goad v. State, 938 S.W.2d 363, 370 (Tenn. 1996).

This two-part standard of measuring ineffective assistance of counsel also applies to claims arising out of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58 (1985). The prejudice component is modified such that the defendant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59; see also Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998).

In evaluating a lawyer's performance, the reviewing court uses an objective standard of "reasonableness." Strickland, 466 U.S. at 688; Burns, 6 S.W.3d at 462. The reviewing court must be highly deferential to counsel's choices "and should indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Burns, 6 S.W.3d at 462; see also Strickland, 466 U.S. at 689. The court should not use the benefit of hindsight to second-guess trial strategy or to criticize counsel's tactics, see Hellard v. State, 629 S.W.2d 4, 9 (Tenn. 1982), and counsel's alleged errors should be judged in light of all the facts and circumstances as of the time they were made, see Strickland, 466 U.S. at 690; Hicks v. State, 983 S.W.2d 240, 246 (Tenn. Crim. App. 1998).

A trial court's determination of an ineffective assistance of counsel claim presents a mixed question of law and fact on appeal. Fields v. State, 40 S.W.3d 450, 458 (Tenn. 2001). This Court reviews the trial court's findings of fact with regard to the effectiveness of counsel under a de novo standard, accompanied with a presumption that those findings are correct unless the preponderance of the evidence is otherwise. Id. "However, a trial court's conclusions of law—such as whether counsel's performance was deficient or whether that deficiency was prejudicial—are reviewed under a purely de novo standard, with no presumption of correctness given to the trial court's conclusions." Id. (emphasis in original).

Once a guilty plea has been entered, effectiveness of counsel is relevant only to the extent that it affects the voluntariness of the plea. In this respect, such claims of ineffective assistance necessarily implicate the principle that guilty pleas be voluntarily and intelligently made. Hill v. Lockhart, 474 U.S. at 56 (citing North Carolina v. Alford, 400 U.S. 25, 31, 91 S.Ct. 160, 164 (1970)).

When a guilty plea is entered, a defendant waives certain constitutional rights, including the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront witnesses. Boykin v. Alabama, 395 U.S. 238, 243 (1969). "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." Id. at 242. Thus, in order to pass constitutional muster, a guilty plea must be voluntarily, understandingly, and intelligently entered. See id. at 243 n.5; Brady v. United States, 397 U.S. 742, 747 n.4 (1970). To ensure that a guilty plea is so entered, a trial court must "canvass[] the matter with the accused to make sure he [or she] has a full understanding of what the plea connotes and of its consequence[s]." Boykin, 395 U.S. at 244. The waiver of constitutional rights will not be presumed from a silent record. Id. at 243.

In State v. Mackey, 553 S.W.2d 337 (Tenn. 1977), the Tennessee Supreme Court set forth the procedure for trial courts to follow in Tennessee when accepting guilty pleas. Id. at 341. Prior to accepting a guilty plea, the trial court must address the defendant personally in open court, inform the defendant of the consequences of a guilty plea, and determine whether the defendant understands those consequences. See id.; Tenn. R. Crim. P. 11. A verbatim record of the guilty plea proceedings must be made and must include, without limitation, "(a) the court's advice to the defendant, (b) the inquiry into the voluntariness of the plea including any plea agreement and into the defendant's understanding of the consequences of his entering a plea of guilty, and (c) the inquiry into the accuracy of a guilty plea." Mackey, 553 S.W.2d at 341.

However, a trial court's failure to follow the procedure mandated by Mackey does not necessarily entitle the defendant to seek post-conviction relief. See State v. Prince, 781 S.W.2d 846, 853 (Tenn. 1989). Only if the violation of the advice litany required by Mackey or Tennessee Rule of Criminal Procedure 11 is linked to a specified constitutional right is the challenge to the plea cognizable in post-conviction proceedings. See Bryan v. State, 848 S.W.2d 72, 75 (Tenn. Crim. App. 1992). "Whether the additional requirements of Mackey were met is not a constitutional issue and cannot be asserted collaterally." Johnson v. State, 834 S.W.2d 922, 925 (Tenn. 1992).

Here, the Petitioner claims that she would not have pleaded guilty if she had been apprised that her release eligibility for the second degree murder sentence would be at 100%. Moreover, she argues that she was essentially forced to plead guilty because trial counsel was unprepared to go to trial: he had not filed a motion to suppress her statements to authorities confessing to the child abuse; and he had not procured expert testimony to support a defense theory.

If convicted of by a jury of first degree murder, the Petitioner faced a possible sentence of life without the possibility of parole. While she did not remember that the State filed a notice to seek life without parole, the Petitioner confirmed that she knew, if convicted, she could receive a life sentence, which required, at a minimum, service of fifty-one years. Trial counsel testified that he was aware the State intended to seek life without the possibility of parole if the Petitioner was convicted; he also recalled that the Petitioner could not provide a version of events other than those set forth in her statements or based upon the evidence gathered by the State.

The Petitioner had been evaluated by the Tennessee Mental Health Institute; it was determined that she was competent to stand trial and that an insanity defense could not be supported. Moreover, trial counsel testified that he did not file a motion to suppress the Petitioner's statements because he saw no valid reason to do so; he was able to examine one of the interrogating officers at the preliminary hearing and found no grounds to seek suppression of the statements. Neither the Petitioner nor her father could provide the name of any witness that had information that someone other than the Petitioner had injured the child. The Petitioner did not provide testimony that trial counsel's failure to secure a continuance or file a motion to suppress led her to accept the plea agreement. The expert retained by the defense ultimately testified in mitigation at the sentencing hearing, but he was unable to provide any evidence that would have offered a viable defense for the Petitioner. Trial counsel requested an especially mitigated sentence of thirteen and one-half years at sentencing and made the following statement: "She understands she's gonna be serving a hundred percent of this, which technically may reduce down to 85 percent. Even if the [c]ourt put her on this 13 and a half year sentence, she's looking at serving probably an additional ten years, maybe a little more than that."

The guilty plea transcript reveals that the trial judge carefully reviewed the rights that the Petitioner was waiving and confirms that the Petitioner responded appropriately to questions. The Petitioner testified that she was not under the influence of drugs or alcohol at the time she entered her plea. She stated that trial counsel had reviewed the plea agreement with her, that she had read the plea agreement before she signed it, and that she understood the contents of the document. The Petitioner was asked if she had any complaints about trial counsel, and she answered in the negative. In summary, the record reflects the Petitioner knew and understood the options available to her prior to the entry of her guilty plea including the right not to plead guilty and demand a jury trial, and she freely made an informed decision of that course which was most palatable to her at the time.

The testimony at the post-conviction hearing reveals that the lines of communication were open and used by both the Petitioner and her trial counsel, allowing the Petitioner to make well-informed decisions, despite the fact that she often became agitated and would refuse to participate

in the conversations. The Petitioner's father was present during conversations between trial counsel and the Petitioner. Trial counsel stated that due to the Petitioner's mental deficiencies, he discussed the plea agreement with her "in great detail." He was sure that, despite any inconsistencies in the plea document, the Petitioner understood that 100% service of her service would be required with the possibility of gaining credits to reduce the sentence to 85%. While not reflected on the plea forms, trial counsel explained the nature of his discussion with the Petitioner: He informed her that she was receiving a Range I sentence but then referred back to paragraph c due to the nature of the offense (requiring service of the entire sentence). Additionally, the testimony of the Petitioner's father was, at times, contradictory to the Petitioner's version of events that she believed she would be release eligible after serving 30% of her sentence.

The evidence does not preponderate against the finding of the post-conviction court that the Petitioner offered no credible evidence to support her claims. In consequence, the Petitioner has failed to establish that her guilty plea was not knowing and that she was denied the effective assistance of counsel. See, e.g., Donna Arnold v. State, No. E2006-00161-CCA-R3-PC, 2007 WL 2917727 (Tenn. Crim. App., Knoxville, Oct. 8, 2007).

Conclusion

Based upon the foregoing, we conclude that the post-conviction court did not err by denying post-conviction relief. Accordingly, we affirm the judgment of the Fentress County Criminal Court.

_____

DAVID H. WELLES, JUDGE